IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 64 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BANYAN & BERRY

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR RK PATEL WITH MR.B.D.KARIA for Applicant.

MR AKIL QURESHI FOR MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 28/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the assessee, the following question of law has been referred to this Court for its opinion under the provisions of section 256(1) of the Income-tax Act by the Income-tax Appellate Tribunal, Ahmedabad Bench "C".

"Whether, on the facts and in the circumstances of the case, it could be held that the assessee was not engaged in the manufacture of an "Article" and consequently not entitled to the

benefits of section 80HH of the Income-tax Act."

2. We have heard learned Advocate Mr.R.K.Patel appearing for the applicant - assessee and learned Advocate Mr.Akil Qureshi for the Revenue.

3. It has been fairly submitted by the learned Advocates that the question referred to hereinabove has already been answered by the Hon'ble Supreme Court in the case of Commissioner of Income-tax Vs. N.C.Budharaja reported in 204 I.T.R.412. Accordingly, we hold that the assessee, who was engaged in construction of a dam cannot be said to be engaged in manufacture of any article, and therefore, the assessee cannot claim benefit under the provisions of section 80HH of the Act.

4. In view of the law laid down by the Hon'ble Supreme Court in the judgment referred to hereinabove, we answer the question in the affirmative i.e. against the assessee and in favour of the Revenue.

5. The Reference stands disposed of with no order as to costs.

Sd/- Sd/-
(A.R.Dave, J) (D.A.Mehta,J)

m.m.bhatt